

NTSB Order No. EA-5344

Issued under delegated authority (49 C.F.R. § 800.24)
on the 30th day of November, 2007

Docket SE-17977

(a) Appeal brief....each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its

respondent filed a responsive pleading, is granted.

The record establishes that respondent, through counsel, filed a timely notice of appeal from the law judge's June 7, 2007 oral initial decision.² Respondent, however, did not thereafter file a timely appeal brief, and has not provided good cause for his failure.

To be timely, after being granted an unopposed 10-day extension of time, respondent had to file his appeal brief on or before September 4, 2007. He filed a brief with a certificate of service reflecting a date of September 5, 2007, and a postmark of September 6, 2007.

In response to the motion to dismiss, respondent's counsel admits that the appeal brief was not filed until September 6, 2007, but states that the "paralegal responsible for scheduling and filing the brief was 'confused' as a result of taking prescription medication." We have previously held, however, that unfounded mistakes regarding the calculation of procedural deadlines do not allow for the acceptance of untimely appeal briefs, nor do they constitute good cause for noncompliance. See Administrator v. Smith, NTSB Order No. EA-4485 (1996). We reject the argument that this delay was excusable or that it constituted good cause. The oversight of his counsel's law office as to submission of the appeal does not suffice to establish good cause for respondent's delay. Though we acknowledge that a paralegal's failure to correctly calculate the due date for submission of an appeal brief is unfortunate, we have held that attorneys and agents of respondents are responsible for the actions of their employees. See Administrator v. Slay & Knowles, NTSB Order No. EA-3956 (1993) (counsel's responsibility to ensure that client's brief is filed on time is not altered by delegation of the administrative task of computing the filing deadline to a subordinate); see also Administrator v. McKinney, NTSB Order No. EA-5284 at 8-10 (2007) (discussing counsel's responsibilities in the timely filing of appeals).

Without good cause to excuse a failure to file a timely appeal brief, or a request to file one out of time before it is

(..continued)

own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

² The law judge affirmed the Administrator's order alleging violation of 14 C.F.R. §§ 91.7(a) and (b), and 91.13(a), but reduced the suspension from 45 to 30 days.

due, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. Respondent's appeal is dismissed.

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